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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

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12 OPTUMRX, INC., as successor by
13 merger to Catamaran Corporation, and
OPTUMRX, INC. in its own right,

14 Petitioner,

15 v.

16 A&S DRUGS LLC, *et al.*,

17 Respondents.
18

CASE NO. 8:22-cv-00468-FLA (JDEx)

STIPULATED PROTECTIVE ORDER

Judge: Hon. Fernando L. Aenlle-Rocha

Lead Case No. 8:22-cv-00468-FLA
(JDEx)

[Discovery Document: Referred to
Magistrate Judge John D. Early]

19 Based on the parties' Stipulation, and for good cause shown, the Court finds and
20 orders as follows.

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1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT

The parties acknowledge that information produced in discovery, regardless of its designation under this Order, may contain personal and health information subject to the protections of, *inter alia*, the Health Insurance Portability and Accountability Act of 1996, the applicable requirements of the Standards for Privacy of Individually Identifiable Health Information and its implementing regulations issued by the U.S. Department of Health and Human Services (45 C.F.R. Parts 160-64; HIPAA Privacy Regulations), and California Civil Code §§ 56 *et seq.*, and 1798.82 *et seq.* (“Privacy Laws”), which protect the confidentiality of individually-identifiable personal and health information. Discovery may also involve trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted.

1 Accordingly, to expedite the flow of information, to facilitate the prompt
2 resolution of disputes over confidentiality of discovery materials, to adequately protect
3 information the parties are entitled or required to keep confidential, to ensure that the
4 parties are permitted reasonable necessary uses of such material in preparation for and
5 in the conduct of trial, to address their handling at the end of the litigation, and to serve
6 the ends of justice, a protective order for such information is justified in this matter. It
7 is the intent of the parties that information will not be designated as confidential for
8 tactical reasons and that nothing be so designated without a good faith belief that it has
9 been maintained in a confidential, non-public manner, and there is good cause why it
10 should not be part of the public record of this case.

11 C. ACKNOWLEDGMENT OF UNDER SEAL FILING

12 The parties further acknowledge, as set forth in Section 12.3, below, that this
13 Stipulated Protective Order does not entitle them to file confidential information under
14 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
15 standards that will be applied when a party seeks permission from the court to file
16 material under seal. There is a strong presumption that the public has a right of access
17 to judicial proceedings and records in civil cases. In connection with non-dispositive
18 motions, good cause must be shown to support a filing under seal. *See Kamakana v.*
19 *City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen.*
20 *Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony*
21 *Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective
22 orders require good cause showing), and a specific showing of good cause or
23 compelling reasons with proper evidentiary support and legal justification, must be
24 made with respect to Protected Material that a party seeks to file under seal. The
25 parties' mere designation of Disclosure or Discovery Material as CONFIDENTIAL
26 does not— without the submission of competent evidence by declaration, establishing
27 that the material sought to be filed under seal qualifies as confidential, privileged, or
28 otherwise protectable—constitute good cause.

Further, if a party requests sealing related to a dispositive motion or trial, then compelling reasons, not only good cause, for the sealing must be shown, and the relief sought shall be narrowly tailored to serve the specific interest to be protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing sought to be filed or introduced under seal, the party seeking protection must articulate compelling reasons, supported by specific facts and legal justification, for the requested sealing order. Again, competent evidence supporting the application to file documents under seal must be provided by declaration.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible.

2. DEFINITIONS

2.1 Action: this pending federal law suit, *OptumRx, Inc. v. A&S Drugs LLC, et al.*, Central District Case No. 8:22-cv-00468-FLA-JDE.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 "Confidential Materials": information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 "CONFIDENTIAL- ATTORNEYS' EYES ONLY" information means Confidential Materials that falls within one or more of the following categories:

a. Trade secrets information, including a formula, pattern, compilation, program, device, method, technique, process, financial data, or list of actual or potential customers or suppliers, that derives independent economic value, actual or

1 potential, from not being generally known to, and not being readily ascertainable by
 2 proper means by, other persons who can obtain economic value from its disclosure or
 3 use;

4 b. Highly sensitive financial, commercial, and marketing information
 5 relating to the parties' respective products and/or business activities, including without
 6 limitation, contracts and fee schedules with participating providers and analyses
 7 reflecting average rates of reimbursement for procedures, and information or analyses
 8 reflecting methods used to determine Maximum Reimbursable Charges or Usual and
 9 Customary Charges;

10 2.5 "CONFIDENTIAL" information means all other Confidential Materials
 11 that do not constitute CONFIDENTIAL- ATTORNEYS' EYES ONLY information,
 12 including but not limited to:

- 13 a. Research and development information;
- 14 b. Information prohibited from disclosure by statute, including the Privacy
 15 Laws;
- 16 c. Medical information concerning any individual;
- 17 d. Personal identity information;
- 18 e. Income tax returns (including attached schedules and forms, W-2 forms
 19 and 1099 forms; or
- 20 f. Personnel or employment records of a person who is not a party to the
 21 case.

22 2.6 Counsel (without qualifier): Outside Counsel of Record and House
 23 Counsel (as well as their support staff).

24 2.7 Designating Party: a Party or Non-Party that designates information or
 25 items that it produces in disclosures or in responses to discovery as
 26 "CONFIDENTIAL" OR "CONFIDENTIAL-ATTORNEYS' EYES ONLY."

27 2.8 Disclosure or Discovery Material: all items or information, regardless of
 28 the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.9 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
5 expert witness or as a consultant in this Action.

6 2.10 House Counsel: attorneys who are employees of a party to this Action (or
7 corporate parent or relevant affiliate) and who have responsibilities related to this
8 Action, as well as paralegals, case assistants, and others acting on behalf of attorneys
9 of a party to this Action to whom it is reasonably necessary to disclose the information
10 for this Action. House Counsel does not include Outside Counsel of Record or any
11 other outside counsel.

12 2.11 Non-Party: any natural person, partnership, corporation, association, or
13 other legal entity not named as a Party to this action.

14 2.12 Outside Counsel of Record: attorneys who are not employees of a party to
15 this Action but are retained to represent or advise a party to this Action and have
16 appeared in this Action on behalf of that party or are affiliated with a law firm which
17 has appeared on behalf of that party, and includes support staff.

18 2.31 Party: any party to this Action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their
20 support staffs).

21 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

23 2.15 Professional Vendors: persons or entities that provide litigation support
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
26 their employees and subcontractors.

1 2.16 Protected Material: any Disclosure or Discovery Material that is
 2 designated as “CONFIDENTIAL” OR “CONFIDENTIAL ATTORNEYS’ EYES
 3 ONLY.”

4 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material
 5 from a Producing Party.

6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only Protected
 8 Material (as defined above), but also (1) any information copied or extracted from
 9 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
 10 Material; and (3) any testimony, conversations, or presentations by Parties or their
 11 Counsel that might reveal Protected Material. However, the protections conferred by
 12 this Stipulation and Order do not cover the following information: (a) any information
 13 that is in the public domain at the time of disclosure to a Receiving Party or becomes
 14 part of the public domain after its disclosure to a Receiving Party as a result of
 15 publication not involving a violation of this Order, including becoming part of the
 16 public record through trial or otherwise; and (b) any information known to the
 17 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
 18 disclosure from a source who obtained the information lawfully and under no
 19 obligation of confidentiality to the Designating Party. In addition, this Order shall not
 20 limit a Party or Non-Party’s ability to use its own Protected Material for any purpose.
 21 Any use of Protected Material at trial shall be governed by the orders of the trial judge.
 22 This Order does not govern the use of Protected Material at trial.

23 4. DURATION

24 Even after final disposition of this litigation, the confidentiality obligations
 25 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
 26 in writing or a court order otherwise directs. Final disposition shall be deemed to be
 27 the later of (1) dismissal of all claims and defenses in this Action, with or without
 28 prejudice; and (2) final judgment herein after the completion and exhaustion of all

1 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits
2 for filing any motions or applications for extension of time pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

5 Each Party or Non-Party that designates information or items for protection under this
6 Order must take care to limit any such designation to specific material that qualifies
7 under the appropriate standards. The Designating Party must designate for protection
8 only those parts of material, documents, items, or oral or written communications that
9 qualify so that other portions of the material, documents, items, or communications for
10 which protection is not warranted are not swept unjustifiably within the ambit of this
11 Order.

12 However, where it is administratively unfeasible or unduly burdensome to
13 designate only portions of material, documents, items, or communications that contain
14 confidential information, the parties may agree to allow wholesale designation to
15 facilitate production, with an agreement to allow for later limited designation as may
16 be appropriate or necessary depending on the overall relevance/importance of the
17 information produced. Mass, indiscriminate, or routinized designations are otherwise
18 prohibited. Designations that are shown to be clearly unjustified or that have been
19 made for an improper purpose (e.g., to unnecessarily encumber the case development
20 process or to impose unnecessary expenses and burdens on other parties) may expose
21 the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it
23 designated for protection do not qualify for protection, that Designating Party must
24 promptly notify all other Parties that it is withdrawing the inapplicable designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this
26 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
27 or ordered, Disclosure or Discovery Material that qualifies for protection under this
28 Order must be clearly so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents,
3 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
4 Producing Party affix at a minimum, the legend “CONFIDENTIAL” OR
5 “CONFIDENTIAL-ATTORNEY’S EYES ONLY” (hereinafter
6 “CONFIDENTIALITY LEGEND”), to each page that contains protected material. If
7 only a portion or portions of the material on a page qualifies for protection, the
8 Producing Party also must clearly identify the protected portion(s) (e.g., by making
9 appropriate markings in the margins).

10 A Party or Non-Party that makes original documents available for inspection
11 need not designate them for protection until after the inspecting Party has indicated
12 which documents it would like copied and produced. During the inspection and before
13 the designation, all of the material made available for inspection shall be deemed
14 “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY.” After the
15 inspecting Party has identified the documents it wants copied and produced, the
16 Producing Party must determine which documents, or portions thereof, qualify for
17 protection under this Order. Then, before producing the specified documents, the
18 Producing Party must affix the “CONFIDENTIALITY LEGEND” to each page that
19 contains Protected Material. If only a portion or portions of the material on a page
20 qualifies for protection, the Producing Party also must clearly identify the protected
21 portion(s) (e.g., by making appropriate markings in the margins).

22 (b) for testimony given in depositions that the Designating Party identify the
23 Disclosure or Discovery Material on the record, either before the close of the
24 deposition all protected testimony or within 30 days following receipt of the deposition
25 transcript.

26 (c) for testimony or argument given in pretrial or other proceedings, that the
27 Designating Party identify, by the close of the hearing, any portion of such hearing or
28 other proceeding involving protected testimony.

(d) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation within 5 days of discovering the inadvertent failure to designate qualified information, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Objecting to Designation: In the event that a Party, or their Counsel, receiving Confidential Materials in discovery designated as “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” objects to such designation (“Challenging Party”) with respect to any or all of such items, said counsel shall advise counsel for the Designating Party, in writing, of such objections, the specific Confidential Materials to which each objection pertains, and the specific reasons and support for such objections (the “Designation Objections”).

6.2 Response to Designation Objections. Counsel for the Designating Party shall have thirty (30) days from receipt of the written Designation Objections to either (a) agree in writing to de-designate Documents, Testimony or Information pursuant to any or all of the Designation Objections and/or (b) file a motion with the Court seeking to uphold any or all designations on Documents, Testimony or Information addressed by the Designation Objections (the “Designation Motion”). In the event that the Designation Objections are neither timely agreed to nor timely addressed in the

1 Designation Motion, then such Documents, Testimony or Information shall be de-
 2 designated in accordance with the Designation Objection applicable to such material.

3 6.3 Meet and Confer. Prior to filing a Designation Motion, the Designating
 4 Party shall initiate the dispute resolution process under Local Rule 37-1 et seq. Any
 5 Designation Motion shall be submitted via a joint stipulation under Local Rule 37-2
 6 and is subject to any timing limitations set forth in the operative Scheduling Order.

7 6.3 The burden of persuasion in any such challenge proceeding shall be on the
 8 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
 9 to harass or impose unnecessary expenses and burdens on other parties) may expose
 10 the Challenging Party to sanctions. Unless the Designating Party has waived or
 11 withdrawn the confidentiality designation, all parties shall continue to afford the
 12 material in question the level of protection to which it is entitled under the Producing
 13 Party's designation until the Court rules on the challenge.

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 16 disclosed or produced by another Party or by a Non-Party in connection with this
 17 Action only for prosecuting, defending, or attempting to settle this Action. Such
 18 Protected Material may be disclosed only to the categories of persons and under the
 19 conditions described in this Order. When the Action has been terminated, a Receiving
 20 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at a
 22 location and in a secure manner that ensures that access is limited to the persons
 23 authorized under this Order.

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 25 ordered by the court or permitted in writing by the Designating Party, a Receiving
 26 Party may disclose any information or item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
2 employees of said Outside Counsel of Record to whom it is reasonably necessary to
3 disclose the information for this Action;

4 (b) the officers, directors, and employees (including House Counsel) of the
5 Receiving Party to whom disclosure is reasonably necessary for this Action;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this Action and who have signed the
8 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

11 (f) professional jury or trial consultants, mock jurors, and Professional
12 Vendors to whom disclosure is reasonably necessary for this Action and who have
13 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (g) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information. In
16 addition, if such person is not employed by a Party, he or she needs to have signed the
17 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed
18 by the Designating Party or ordered by the court;

19 (h) during their depositions, witnesses, and attorneys for witnesses, in the
20 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
21 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
22 not be permitted to keep any confidential information unless they sign the
23 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed
24 by the Designating Party or ordered by the court. Pages of transcribed deposition
25 testimony or exhibits to depositions that reveal Protected Material may be separately
26 bound by the court reporter and may not be disclosed to anyone except as permitted
27 under this Stipulated Protective Order; and
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- (i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions;
- (j) any other person that the Designating Party agrees to in writing;
- (k) any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper.

7.3 Disclosure of “CONFIDENTIAL ATTORNEYS’ EYES ONLY” Information or Items: Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may only disclose any information or item designated “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” to:

- a. the court and its personnel;
- b. the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;
- c. the Receiving Party’s House Counsel;
- d. Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- e. any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;
- f. court reporters and their staff; and
- g. any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall
2 include a copy of the subpoena or court order;

3 (b) promptly, within five (5) days, notify in writing the party who caused the
4 subpoena or order to issue in the other litigation that some or all of the material
5 covered by the subpoena or order is subject to this Protective Order. Such notification
6 shall include a copy of this Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued
8 by the Designating Party whose Protected Material may be affected.

9 If the Designating Party timely seeks a protective order, the Party served with
10 the subpoena or court order shall not produce any information designated in this action
11 as “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” before a
12 determination by the court from which the subpoena or order issued, unless the Party
13 has obtained the Designating Party’s permission. The Designating Party shall bear the
14 burden and expense of seeking protection in that court of its confidential material and
15 nothing in these provisions should be construed as authorizing or encouraging a
16 Receiving Party in this Action to disobey a lawful directive from another court.

17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
18 IN THIS LITIGATION

19 (a) The terms of this Order are applicable to information produced by a Non-
20 Party in this Action and designated as “CONFIDENTIAL” or “CONFIDENTIAL-
21 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in
22 connection with this litigation is protected by the remedies and relief provided by this
23 Order. Nothing in these provisions should be construed as prohibiting a Non-Party
24 from seeking additional protections.

25 (b) In the event that a Party is required, by a valid discovery request, to
26 produce a Non-Party’s confidential information in its possession, and the Party is
27 subject to an agreement with the Non-Party not to produce the Non-Party’s
28 confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

12.4 Use of Protected Material at Trial: The Parties shall meet and confer regarding the procedures for use of Protected Materials at trial and shall move the

1 Court for entry of an appropriate order. The use of designated materials at trial shall be
2 governed by the orders of the trial judge.

3 12.5 Counsel bound by Protective Order: Counsel agree to be bound by the
4 terms set forth herein with regard to any Protective Materials that have been produced
5 before the Court signs this Stipulation and Protective Order.

6 12.6 New Parties: Any new party to the Action who has not executed this
7 Stipulation and Protective Order as of the time it is presented to the Court for signature
8 may thereafter become a Party to this Stipulation and Protective Order by its Counsel's
9 signing and dating a copy of Exhibit A attached hereto, and filing the same with the
10 Court, and serving copies of such signed and dated copy upon the other Parties to this
11 Stipulation and Protective Order.

12 12.7 Right to Extend Deadlines: Nothing in this Order prevents the Parties
13 from modifying the deadlines contained herein as needed to avoid unnecessary
14 motions or disputes or for other reasons to promote efficient litigation of the Action
15 provided the modification does not affect the Court's schedule.

16 13. FINAL DISPOSITION

17 After the final disposition of this Action, as defined in paragraph 4, within 60
18 days of a written request by the Designating Party, each Receiving Party must return
19 all Protected Material to the Producing Party or destroy such material. As used in this
20 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
21 summaries, and any other format reproducing or capturing any of the Protected
22 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
23 must submit a written certification to the Producing Party (and, if not the same person
24 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
25 category, where appropriate) all the Protected Material that was returned or destroyed
26 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
27 compilations, summaries or any other format reproducing or capturing any of the
28 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an

1 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
2 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
3 attorney work product, and consultant and expert work product, even if such materials
4 contain Protected Material. Any such archival copies that contain or constitute
5 Protected Material remain subject to this Protective Order as set forth in Section 4
6 (DURATION).

7 14. AUTHORIZATION TO PRODUCE

8 The Court hereby authorizes the production of information subject to the
9 protections of the Privacy Laws. To the extent that any federal or state laws require
10 the parties to obtain a court order to produce this information, this Order hereby
11 satisfies such requirement(s).

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13 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
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16 Dated: July 06, 2022


17 
18 JOHN D. EARLY
19 United States Magistrate Judge
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that I
 have read in its entirety and understand the Stipulated Protective Order that was issued
 by the United States District Court for the Central District of California on July 6,
 2022, in the case of *OptumRx, Inc. v. A&S Drugs LLC, et al.*, Central District Case No.
 8:22-cv-00468-FLA-JDE. I agree to comply with and to be bound by all the terms of
 this Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that is
 subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order. I further agree to submit to the
 jurisdiction of the United States District Court for the Central District of California for
 the purpose of enforcing the terms of this Stipulated Protective Order, even if such
 enforcement proceedings occur after termination of this action. I hereby appoint
 _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____